

**EDWARD B. KRINSKY, ARBITRATOR**

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In the matter of the Petition of  
  
TEAMSTERS "GENERAL" LOCAL  
UNION NO. 200  
  
To Initiate Arbitration  
Between Said Petitioner and  
  
WASHINGTON COUNTY (HIGHWAY  
DEPARTMENT)  
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Case 104  
No. 53084 INT/ARB-7724  
Decision No. 28789-A

Appearances: Davis & Kuelthau, by Mr. Roger E. Walsh, for the County  
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, by  
Ms. Naomi E. Soldon, for the Union

By its Order of August 12, 1996 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of the [Union] or the total final offer of the [County]."

A hearing was held on October 18, 1996. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' briefs on December 24, 1996.

The parties are at impasse over the terms of a 1995-97 Agreement. The dispute involves three issues: wages, health insurance, and disability pay.

With respect to the wage issue, the Union's final offer is to increase wages for all classifications by 3.5% effective July 1, 1995 and 3.5% July 1, 1996. The County's final offer is a wage increase of 3.0% on each of those dates.

The Union's final offer with respect to health insurance is:

Section 14.02 New P.P.O. program. Retain premium caps of \$ 144.00 - Single, \$ 350.00 - family through December 31, 1996. Effective January 1, 1997, change caps to \$ 154.00 - single \$ 375.00 - family.

Section 14.04 Age 55 and 25 years of service to maintain

paying health insurance program.

The County's health insurance offer is

Effective July 1, 1995, \$ 144/month single and \$ 350/month family

Effective January 1, 1997, \$ 150/month single and \$ 370/month family

With respect to disability pay, the Union proposes a new article:

Employees shall be eligible to receive eighty-five percent (85%) of their rate of pay for one (1) calendar year from date of injury

Certain facts are undisputed concerning the health insurance benefits provided by the County to its various bargaining units: In the negotiations for the 1993-94 and 1994-95 agreements, the County sought to make two changes in health insurance benefits. It proposed to raise the deductible from \$ 100 to \$ 150, and it proposed to reduce the benefits for mental health and alcohol treatment to the levels mandated by the State. Each of the two proposals was valued at approximately 2% of the health insurance premium.

Three bargaining units (including the one in the present dispute) agreed to the reduction in mental health and alcohol benefits, but they did not agree to increase the deductible. Three bargaining units agreed to the increased deductible, but not to the reduction in mental health and alcohol benefits. One bargaining unit agreed to both changes.

In the current round of bargaining, all bargaining units have agreed to a change in the health insurance which the County provides. The new insurance has a deductible of \$ 150 and it has mental health and alcohol benefits at the State mandated level.

For the purpose of comparisons with other counties, the parties stipulated that the following county highway departments are appropriate comparisons: Dodge, Fond du Lac, Ozaukee, Sheboygan and Waukesha. In addition, the Union views the City of West Bend as an appropriate comparison.

There are preliminary issues raised by the County which the arbitrator will address first. One issue is with respect to the Union's final offer altering the conditions under which retirees may continue to pay for health insurance. The County proposes no change in the existing Section 14.04 of the Agreement which reads.

Employees who retire at age 60 with a minimum of

twenty (20) years of continuous County Service with the Highway Department may pay to the County the full cost of the health insurance premium, either family or single coverage until the employee reaches age 65 ..

The County also proposes no change to the "Memorandum of Agreement" [other than to change the dates, see below] which was appended to the Agreement. The Memorandum states:

1. It is hereby agreed by the undersigned parties that during the term of the 1993-95 Agreement, employees who retire at age 55 with a minimum of thirty-five (35) years of continuous County Service with the Highway Department may pay to the County the full cost of the health insurance premium, either family or single coverage until the employee reaches age 65...

The County notes also that in the current bargaining, the parties reached tentative agreement on the following, on June 26, 1996:

...2. Memorandum of Agreement - Retain Paragraphs 1 and 2, but change the reference from the "1993-1995 Agreement" to the "1995-1997 Agreement" in both Paragraphs...

As stated above, the Union proposes: "Section 14.04 Age 55 and 25 years of service to maintain paying health insurance program." Union Business Agent Wenker testified on cross-examination that the proposal was not meant to replace the current language of 14.04, but he acknowledged that the final offer does not say that.

The County asserts that the Union's proposal is ambiguous and therefore the arbitrator should select the County's final offer. The County states:

...what type of "service" is the Union referring to? Is it "continuous" service, or is it "cumulative" service? Is it service with Washington County or is it service with some other employer? Is it service with the County regardless of where employed by the County? Is it service with the County with the Highway Department?

The arbitrator does not share the County's view that the Union's proposal is ambiguous with respect to the meaning of "service". The existing language is in terms of ". . .continuous County Service with the Highway Department." The Union's offer does not suggest any change in that definition. It only proposes to change the age and number of years in Section 14.04.

In arguing further that the Union's proposal to change Section 14 04 is ambiguous, the County states:

. does the Union's proposal completely replace Section 14.04 and Paragraph 1 of the Memorandum of Agreement, or does it only replace Paragraph 1 of the Memorandum of Agreement, or is it to be a separate eligibility requirement in addition to Section 14.04 and Paragraph 1 of the Memorandum of Agreement? In the Tentative Agreements dated June 26, 1996, the parties agreed to continue Paragraph 1 of the Memorandum of Agreement. Can the Agreement contain an eligibility requirement of age 55 and 35 years of continuous County service with the Highway Department in one part of the Agreement while having an eligibility requirement of age 55 and 25 years of service in another part of the Agreement?

The Union is asking that Section 14.04 remain as is except to change the age and years of service stated there. The Union's proposal is to change Section 14.04 but its final offer makes no mention of the Memorandum of Agreement. Thus, if implemented, the Union's 14.04 proposal would allow employees who retire at age 55 and 25 years of continuous County Service with the Highway Department to pay to the County the full cost of the health insurance premium until the employee reaches age 65. Under the tentatively agreed upon Memorandum of Agreement employees who retire at age 55 and 35 years of service would be allowed to pay the County the full cost of the health insurance premium. The County is correct that there is ambiguity in the Union's proposal , unless the Union's final offer is read to replace the June 26th tentative agreement. The meaning to be given to the Union's proposal is complicated further by the testimony of Union Business Agent Wenker on cross-examination that the Union's Section 14.04 proposal was not meant to replace the current language of 14.04, but he acknowledged that the final offer does not say that.

The County raises another issue concerning the Union's proposal, this time citing the

fact that the Union's proposal with respect to disability is clear and unambiguous in providing a disability benefit regardless of the type of injury. The Union's final offer states, as previously noted: "Employees shall be eligible to receive eighty-five percent (85%) of their rate of pay for one (1) calendar year from date of injury." Testimony at the hearing made clear that in bargaining the Union stated orally that its proposal was intended to apply to instances when employees have Workers' Compensation injuries. However, the language of the Union's final offer is silent with respect to Workers' Compensation. The County argues:

At the hearing, the Union claimed that the "injury" referred to in its proposal was a Worker's Compensation type injury. However, the Union's specific proposal contained in its Final Offer does not make such a limitation. The Union is the sole author of its Final Offer and it must take the responsibilities of poor draftsmanship.

Since the parties both knew during bargaining what the Union was proposing, and it was clear that the Union was referring to Workers' Compensation injuries, the arbitrator construes the Union's proposal to have that meaning. The Union's final offer is not written in a manner which suggests that the Union meant its disability pay offer to be actual contract language, but rather it may be viewed as a statement of a concept, and both parties knew what the Union was seeking. The arbitrator will consider the Union's disability pay proposal below, making the assumption that its intent is to apply to Workers' Compensation injuries.

In making his decision the arbitrator is required to consider and give weight to the statutory criteria. The parties did not cite several of the criteria listed at subparagraph (7r) ; namely (a) the lawful authority of the municipal employer; (b) stipulations of the parties; (c) the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement; (h) overall compensation presently received by the employees; and (i) changes during the pendency of the arbitration proceedings. Another factor which is not an issue in this case is (7) the "greatest weight" factor. The arbitrator is obligated to give the greatest weight "...to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer." No such state law or directive is cited by the parties as having any relevance to the question of which of their final offers should be selected.

Subparagraph (7g) is the "greater weight" factor which directs the arbitrator to ". give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r."

The Union cites unemployment statistics which show that in July, 1995 Washington County's unemployment rate of 2.5% ranked 64th among Wisconsin's 72 counties. The County's rank was 64 in January, 1996 and 65 in July, 1996. The Union also cited statistics showing that between 1990 and 1995 the County's population has grown 12.2%.

The County cites statistics showing that on a per capita basis it ranks third among the six comparables in property tax per capita for 1995. For 1994 the County ranks third among the six comparable counties with respect to per capita income, and the County ranked 4th among the State's 72 counties on that measure. For 1996, the County averaged the first eight months of unemployment figures to derive an average figure of 3.1 percent, which ranks tied for 2nd highest among the six comparable counties. The County argues:

Washington County's wage rates for its Highway Department rank second, or within 1 cent of second, among the wage rates paid Highway Department employees employed in comparable counties, and thus are above the third and fourth place rankings of Washington County in the factor to be accorded "greater weight."

The County has a growing population, low unemployment, high per capita income and high per capita property taxes. It is clearly an area which is prospering, but these facts do not persuade the arbitrator that one final offer is preferable to the other.

The statute directs the arbitrator to consider factors (d) comparisons of wages, hours and conditions with those "...of other employees performing similar services," and (e) comparisons of wages, hours and conditions of employment with those "...of other employees generally in public employment in the same community and in comparable communities." The arbitrator will consider these factors together.

With respect to the Union's proposal to change the age and service requirements for retirees to participate in the County's health insurance plan, the Union's sole argument in its brief is, "...the Union's proposal regarding retiree insurance provides a valuable benefit to employees, at no cost to the Employer."

In addition to its arguments about the ambiguity of the Union's proposal, the County argues that there is no compelling reason for the arbitrator to order this change in the status quo. The County cites the fact that four of its seven bargaining units have no contractual provisions allowing retirees to continue participation in the County's health insurance plan. With respect to the other two internal bargaining units one, the Corrections and Communications Officers Association, has benefits which are similar to the existing benefits in the Highway Department. The other, the Deputy Sheriff's

Association has more generous provisions, but they are in line with the normal retirement age requirements for protective occupation employees in Wisconsin. The County thus argues:

...no other non-protective occupation employee in the County has a better retiree health insurance benefit than currently exists for the Highway Department bargaining unit employees. There simply is no support in the internal comparables for the Union's demand for more liberal eligibility requirements allowing retirees to remain in the County's health insurance plan. Acceptance of the Union's Final Offer would result in the addition of a new and unique benefit for the Highway employees.

The County argues also that the external comparables do not support the Union's proposal. It cites the fact that two counties have no provisions relating to this issue, and a third, Ozaukee County, allows a retired employee to remain in the health insurance plan if the value of the employee's unused sick leave is available to pay for the premiums.

Based upon both the internal and external comparables, there is more support for the County's final offer on retiree health insurance eligibility than there is for the Union's final offer.

With respect to the Union's disability pay proposal, the Union asserts that the proposal is "...more in line with comparable communities and other Washington County bargaining unit employees..." It argues:

...All other Washington County bargaining unit employees enjoy some level of remuneration above the statutory amount while off work due to a work-related injury...

The Union cites:

Washington County Deputy Sheriffs: 85% of regular pay for a year  
Washington County Officers: same  
Washington County Social Workers: 100% of regular rate of pay for 13 weeks while on work-related injury  
Washington County Social Service Workers: same  
  
Sheboygan County Highway Department: 80% of pay for duration of worker's compensation absence

Waukesha County Highway Department. 80% of pay for six months of  
worker's compensation absence

The County argues that even under the arbitrator's interpretation of the Union's final offer, "the Union's proposal still is far in excess of any supplemental Worker's Compensation pay benefit that has been granted to any other employee of Washington County or to any Highway employee in another comparable county," because the proposal "does not provide for any offset from this 85% for any Worker's Compensation payments received by that employee for that injury."

The County cites the fact that the two internal social service units, which pay 100% of pay for the first 13 weeks of injury, provide that the employee must turn over any Worker's Compensation pay to the County. The two units in the Sheriff's Department receive the difference between 85% of pay and their Worker's Compensation pay for one year.

The County argues further:

Further, even if the Union's proposal had contained a Worker's Compensation payment offset, the Union's proposal would have been the most generous of any such benefit granted to other County employees or to any Highway employee in a comparable county. Two Washington County units have no such benefit, two provide 100% of salary for 13 weeks, one has 85% of salary for 13 weeks, and only two units have the 85% for one year benefit claimed to be contained in the Union's Final Offer. Among the external comparables, Ozaukee County has no supplemental Worker's Compensation pay benefit; Fond du Lac County has no definite supplemental pay benefit, but the Finance, Taxation and Personnel Committee could agree on a case by case basis to provide some supplement to Worker's Compensation payments; Dodge County pays the difference between Worker's Compensation and net take home pay for 36 weeks and the difference between Worker's Compensation and 66% of pay thereafter while on Worker's Compensation, Waukesha County provides for 80% of pay including Worker's Compensation for 6 months; and Sheboygan County provides for 80% of pay including Worker's Compensation during the period the employee is eligible for Worker's Compensation.

Based upon both the internal and external comparables, there is more support for the County's final offer on retiree health insurance eligibility than there is for the Union's final offer. That is, the Union has not shown that a majority of the bargaining units, either internally or externally, have disability benefits which are as generous as those which the Union has proposed in its final offer.

With respect to health insurance caps, the Union argues that its proposal "...differs only slightly from that of the County." It states, "averaging the \$ 4.00 and \$ 5.00 per month liability, the Employer's potential cost under the Union's proposal is only \$ 27.00 per person."

Referring to its health insurance proposal generally, not simply the issue of caps, the Union argues that its proposal:

.. is particularly reasonable in light of the County's recent settlements with the Washington County social service employees and the Washington County social workers. Those settlements provide a health insurance bonus amounting to a \$ 104.38 cash payback to all employees. The County's final proposal to the Union here contains no such bonus.

The arbitrator has read the sections of the new social service agreements referred to above by the Union. The language is in a section of the Memorandum of Agreement entitled "Waiver of Employee Contribution." The reason for the waivers is not self evident, and perhaps relates to adjustments which have been made in health insurance premiums; the arbitrator simply doesn't know, nor does he know whether the County will make a similar adjustment for the employees in the Highway unit. Without knowing the rationale for the waivers, the arbitrator is not in a position to view the employees of the Highway bargaining unit as being at a disadvantage that should be remedied in this proceeding.

The County does not disagree with the fact that the difference between the parties' final offers is small with respect to caps, but it argues:

...Every employee of Washington County, regardless of bargaining unit or whether or not represented by a Union made the same monthly contribution to the single and family health insurance premium cost in 1996. The same \$ 144 monthly single premium cap and \$ 350 monthly family premium cap was also in effect for all Washington County employees in 1995,

and the same monthly health insurance premium caps were in effect for all Washington County employees in 1994, i.e. \$ 130 for the single plan and \$ 320 for the family plan.

The County argues also that for 1997 the three bargaining units in the County which have reached a voluntary settlement have all agreed to the same monthly caps which the County has proposed in its final offer in this proceeding.

These internal comparables favor the County's final offer.

The County also cites external comparables. The parties are not in disagreement about the monthly caps in 1996. The 1997 data presented by the parties is not available for four of the five comparable counties. This being the case, there is not an adequate basis for evaluating the Union's proposal for monthly caps against the external comparables.

The Union views its final offer with respect to wages as more reasonable than the County's based upon both external and internal comparisons. With respect to external comparisons, the Union argues:

There can be no dispute that the external comparables' wages support the Union's final offer. While there is (sic) no data for the last six months of the contract (i.e. January 1, 1997 through June 30, 1997), the Highway Department employees in Dodge County received a 3.9% increase in 1995, and a 3.75% increase in 1996; in Fond du Lac County they received a total increase of 3.75% in 1996; and in Sheboygan County they received a 4.25% increase in 1995.

The County argues that its final offer is supported by the external comparables. It argues:

Washington County's 1995 wage rate for a Highway Patrolman ranked second among the comparables, 41 cents and (sic) hour above the average rate (Washington County's 1995 Mechanic rate was 1

cent behind the second place rate, but 43 cents per hour above the average rate among the comparables.) The two Counties with the lowest wage rates, Dodge at \$ 12.75 per hour, and Fond du Lac at \$ 13.17 per hour, received a 1996 wage increase of 3.5% cost, 3.9% lift, and 3.0% cost, 3.75% lift, respectively, but these higher increases include some catch-up amount. Sheboygan County is in interest arbitration for its 1996-1997 contract, but the wage increases have been agreed to between the County and the Union at 3.0% each year, the same as proposed by the (sic) Washington County in this proceeding. Ozaukee County will grant a 3.5% increase for 1996, but that is for the second year of a two year contract negotiated in late 1994-early 1995. Only Sheboygan County has a settled wage rate for 1997.

There are no voluntary wage settlements as yet among the external comparables for 1997. One, Sheboygan County, is in interest arbitration, and both parties' final offers call for a wage increase of 3.0%. These data are not an adequate basis for drawing any conclusions about which final offer in the present proceeding is more reasonable for 1997.

With respect to the 1996 wage settlements, if looked at in terms of actual increases (as contrasted with wage lift) received for the period of the year, Sheboygan County's increase will be 3.0% as a result of arbitration, since both parties are offering 3.0%. In Fond du Lac County the actual increase received averages 3.0%, although the wage lift for the year is 3.75%. Ozaukee County's wage increase was 3.5%, as was the cost of Dodge County's increase, although the wage lift for the year in Dodge County is 3.9%. These comparables do not clearly favor either party's final offer, although the Union's final offer is preferred if only the wage lift is considered.

Viewed in cents per hour, the County's proposed wage rates in 1996 for patrolmen and mechanics maintain their ranking in relationship to the other external units, and the County's final offer maintains the relationship with the median of the other external units more closely than does the Union's final offer.

With respect to internal comparables, the Union cites the fact that all units received a 3.5% increase in 1995, whereas the increase to the Highway Department unit was

3.0% The Union argues also:

...In 1996, the Washington County professional employees and social workers received a 3% increase, plus a .5% increase in the top step, amounting to an additional 1/2 percent in 1996, and a 3.5% increase in 1997. The Washington County Samaritan Health Care Center employees received an increase totaling 4.25% in 1996 and 4% in 1997.

The County notes correctly that the Highway Department Agreement is on a July-July basis, while the other County agreements are on a calendar year basis. Looking at the three bargaining units which have settled voluntarily for 1996-97, the County cites the fact that the two social services units settled for 3.0% in the first year. The increase at Samaritan Health Center was 3.0% on January 1, 1996 and 1.0% at the end of the day on December 31, 1996 "which also resulted in an actual 1996 wage benefit of 3.0% over the 1995 level."

The across the board wage increases for 1996 for the settled units favor the County's final offer more than the Union's. However, if wage lift is the measurement, the settlements favor the Union's final offer more than the County's.

The increase for the second year is 3.5% for the social service units. The unit at Samaritan will receive 2.0% on January 1, 1997 and 2.0% at the end of the day on December 31, 1997. The County states that for 1997, the "actual across the board wage benefit will be 3.0% over the 1996 level). The County then argues at length, as follows:

The Union may attempt to claim that [the 3 settled units] received additional increases over and above the across the board increases and this justifies the Union's higher wage increase offer. In the [Samaritan] contract, a new top step, after 54 months of service, was added on July 1, 1996 at a wage rate 1.25% higher than the old 42 month top step, and this 54 month step was increased to 2.5% above the 42 month step on July 1, 1997. In the Local 609 contract, Step VI-after 54 months the next to top step, was increased an additional 0.5% on July 1, 1996 and Step VII-after 66 months, the top step, was increased an additional 0.5% on July 1, 1997. ..In the Local 809 contract, a new 66 month top step was

created as of July 1, 1996 which was 0.5% above the old 54 month top step, and this new 66 month step was increased an additional 0.5% on July 1, 1997. Significantly, employees of the Highway Department reach the top step of the pay schedule after only 30 months of service, two to three years earlier than employees in the Locals 150, 609 and 809 units

The County goes on to argue that these increases in top rates for nursing assistants, senior clerk typists economic support specialists, and social workers are all justified by the need for catch-up to similar employees in the comparable counties.

The arbitrator has not weighed the increases given to some internal units which are not across the board increases. The reasons for those increases were not detailed in this proceeding. The arbitrator does not know whether there would have been justification for non-across the board increases to the Highway unit, but in any event no such increases were requested as part of the Union's final offer.

For 1997, two of the three settlements favor the Union's final offer more than the County's, in terms of across the board increases. If only wage lift is considered, all of the internal settlements favor the Union's offer.

The statute directs the arbitrator to consider factor (f), comparison of wages, hours and conditions of employment with "...the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities." The only private sector data used by the parties in their arguments are BNA statistics presented by the County. The County argues that the statistics.

...for the first 40 weeks of 1996 indicate that the "median first-year increase...in all industries equaled 3 percent or 41.3 cents an hour" Even factoring in lump-sum bonuses, the median increase was 3.1% or 45 cents per hour. This compares very well with the County's Final Offer of 3.0% or 42 to 43 cents per hour. The Union's 3.5% or 39 to 41 cents per hour demand is considerable (sic) above these all industry averages and cannot be justified. [the arbitrator has quoted the County's brief correctly with respect to the cents per hour increases]

The arbitrator does not view these data as an adequate measure of private

employment conditions in the same community as Washington County, or comparable communities, and thus he does not view these data as supporting one party's final offer more than the other.

Factor (g) directs the arbitrator to consider the cost of living. The parties are bargaining for a new Agreement commencing July 1, 1995. The most relevant cost of living statistics would be those for the prior year. The All Urban Consumers index, if the changes from the preceding year for each month are averaged for the period July, 1994 through June, 1995 show an average increase of 2.9%. Using the year July, 1995 through June, 1996, which would have relevance to the fairness of the second year of the parties' proposed Agreement, the average increase is 2.7%. Using the Urban Wage Earners and Clerical Workers index for these same periods produces average increases of 2.9% and 2.7% respectively.

Both parties' wage offers alone, without consideration of the cost of other items which they have negotiated, exceed the cost of living changes. The County's final offer, as the lower of the two final offers, is closer to the changes in cost of living than is the Union's.

The remaining statutory factor which the arbitrator must consider is (j), "such other factors . . . normally or traditionally taken into consideration in arbitration. . ." The arbitrator has previously discussed the County's arguments with respect to the ambiguity of the Union's proposal. The arbitrator agrees with the County that implementation of an ambiguous final offer should be avoided, if possible. The County argues also that the Union has not offered any quid pro quo for those portions of its final offer which would grant to the Union more generous benefits than those given by the County to its other employees. The County appears to be correct, since there is no evidence presented by the Union demonstrating any quid pro quo.

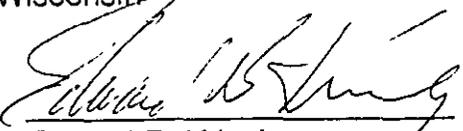
### **Conclusion:**

As mentioned at the outset of this decision, the statute requires the arbitrator to award wholly in favor of one final offer or the other. In this proceeding the arbitrator has concluded that the County's position has greater justification than the Union's on the issues of disability pay, health insurance caps and retiree health insurance. The Union's final offer on retiree health insurance is also ambiguous. With respect to the wage issue, there is very little basis for a decision, since there is support for both offers in both the internal and external comparables. If actual wage increases received are the measure, the County's offer is preferred. If wage lift over the period of the Agreement is the measure, there is greater support for the Union's offer. The County's offer is preferred when the final offers are measured against the change in the cost of living.

Based upon the above facts and discussion, the arbitrator hereby makes the following  
AWARD

The County's final offer is selected.

Dated this 2<sup>nd</sup> day of January, 1997 at Madison, Wisconsin

  
Edward B. Krinsky  
Arbitrator